

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, s 268, as amended
AND IN THE MATTER OF the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended
AND IN THE MATTER OF an Arbitration between:

HIS MAJESTY THE KING IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF FINANCE

Applicant

- and -

CHUBB INSURANCE COMPANY OF CANADA
and CO-OPERATORS GENERAL INSURANCE COMPANY

Respondents

AWARD

COUNSEL APPEARING

Daniel Strigberger, counsel for the Respondent, Co-operators General Insurance Company (hereinafter referred to as "Co-operators").

Miranda Lacalamita, counsel for the Respondent, Chubb Insurance Company of Canada (hereinafter referred to as "Chubb").

INTRODUCTION

This matter comes before me pursuant to the *Arbitration Act*, 1991 to arbitrate a dispute between two insurers with respect to a priority issue that has arisen pursuant to the *Insurance Act*, R.S.O. 1990, c. I.8, as amended and specifically s. 268 of the *Insurance Act* and Regulation 283/95.

By way of background, this case arises out of a motor vehicle accident that occurred on November 9, 2021. The claimant was on a bike when she was struck by a car that was initially unidentified. The Motor Vehicle Accident Claims Fund received the OCF-1.

Later it was determined that the Respondent, Co-operators, insured the vehicle that struck the claimant. However, Co-operators takes the position that as of the date of loss coverage on the

vehicle with respect to accident benefits had been suspended by virtue of an OPCF-16.

Chubb insures Toyota Credit Canada, Inc. under a fleet policy. The striking vehicle was a leased vehicle.

As it is acknowledged that either Co-operators or Chubb will be the priority insurer under s. 268 of the *Insurance Act* the Applicant, MVACF, did not participate in this hearing.

Chubb takes the position that the Co-operators policy was not suspended and that Co-operators is the priority insurer.

PROCEEDINGS

There were a number of pre-hearings conducted. The hearing was in writing but counsel were also given an opportunity to make oral submissions. There were no witnesses called.

The following documents were submitted and relied upon at the hearing:

1. Certificate of Insurance of Melba G. effective September 15, 2021 to December 28, 2021;
2. Certificate of Insurance of Melba G. effective November 9, 2021 to December 28, 2021;
3. Motor Vehicle Collision Report, November 9, 2021;
4. Application for Accident Benefits, November 17, 2021;
5. Co-operators redacted underwriting notes, November 1, 2016 to April 3, 2024;
6. Contact centre recording between Melba G. and Co-operators dated September 14, 2021;
7. Transcribed contact centre recording between Melba G. and Co-operators;
8. Copy of underwriting log notes of Co-operators showing communications sent to their insured June 23, 2021 to March 23, 2022;
9. Copy of Chubb Commercial Automobile Coverage for Toyota Credit Canada: SPF-8;
10. Copy of the standard Superintendent-approved OPCF-16 Suspension of Coverage;
11. Divorce Order dated August 13, 2008;
12. Certificate of Divorce dated August 25, 2008;
13. Copy of the standard OAP-1: Ontario Automobile Owner's Policy.

In addition, the parties submitted an Arbitration Agreement dated November 13, 2025.

ISSUE IN DISPUTE

The Arbitration Agreement identifies the following issue in dispute:

As between Chubb and Co-operators, which insurer is required to pay the claimant's accident benefits?

This is clearly a very broadly-stated issue and it can be narrowed down to the following:

1. Was the OPCF-16 in effect at the date of loss and if so did it absolve the Respondent, Co-operators, of its obligation to pay statutory accident benefits to the claimant?

FACTS

Melba G. had been insured by Co-operators under automobile policy 0506231778 issued through a brokerage for a number of years. On the policy in place on the date of loss of November 9, 2021 the only vehicle insured as the described automobile was a 2020 Toyota Corolla SE four-door. This was the vehicle Melba was operating when the accident occurred with the claimant on November 9, 2021.

Before turning to the accident itself, it is important to look at Melba's history of dealings with Co-operators, specifically vis-à-vis any suspension of road coverage.

The facts support that Melba had a lengthy history going back to 2011 of contacting Co-operators and suspending her road coverage on her vehicle and then reinstating it. This revolved around dates when she would be travelling.

The underwriting notes from Co-operators show the following:

- October 19, 2011: Melba came into the office to confirm that she will be going away November 1 to Florida and storing her vehicle during that time. Comprehensive coverage only requested. When she returns she will let us know to put it back on the road.
- April 28, 2011: Reinstated full coverage.
- October 30, 2017: Comp only as going on vacation for a month.
- December 11, 2017: Add coverage back onto vehicle.
- November 2, 2018: Policy change: comp only. Suspend coverages.
- February 28, 2019: Policy change adding coverage back. It has been suspended since November 2.
- January 21, 2020: Spoke with Melba. She requested to put vehicle on park for roughly the next two months as she is going on vacation until mid-March. Applied OPCF-16. Advised of the decrease of premium and her new monthly of \$25.70 until she reinstates coverage.

- March 5, 2020: Reverse suspension of coverage.

Melba planned to go on holiday again in September of 2021. According to the Co-operators underwriting file, it's notes reflect the following:

- September 14, 2021: Spoke with Melba G. ... Added OPCF-16 ... Client called in to get OPCF-16 added onto the policy as they will be travelling until the end of October, advised client the earliest they will be able to reinstate coverage will be 30/10/2021. Confirmed email, OS, PPL.

This note coincides with both the audio and transcribed version of this conversation that was submitted into evidence. The following are the relevant extracts from the actual transcripts of the call on September 14:

- Claimant: I am calling to cancel my insurance or because I leave tomorrow vacation and I come back at the end of October.
- Operator: So let me take a look. So we have two options. You can cancel your policy completely if you like the only thing is you will have to call us back to get a new policy or what we ...
- Claimant: No, no, no, I don't want to cancel, I just want to stop and when I do that I stop it.
- Operator: Right, that is what I am confirming. The other option is we issue what is called a, something called a suspension of coverage. Which temporarily means you cannot drive the vehicle but once you want to drive again you can call us back and reinstate coverage, okay?
- Claimant: Yes, I do that when I go on vacation. I do that all the time.
- Operator: Okay. And when do you want that suspension of coverage to start? What time or what date? Tomorrow?
- Claimant: I am leaving tomorrow morning.
- Operator: Thank you for your patience there. So if we issue the suspension starting tomorrow until your renewal on the 28th of December 2021 you will see a decrease of \$331 that will be spread over your remaining three payments bringing your price from \$128.09 a month down to \$17.66 per month, okay?
- Claimant: Wow, for how long?
- Operator: Until you call to reinstate the coverage at which point it will be increased again.
- Claimant: Okay, perfect - 13th October, yes it's okay.

- Operator: Okay, I have gone ahead and issued that. I will email you.
- Claimant: Am I going to have fire and theft no?
- Operator: Yes ma'am, that is correct.
- Claimant: Is that what I pay for?
- Operator: Exactly. So you can't drive the vehicle but you are covered for that and you remain.
- Claimant: Nobody will drive the car, nobody will drive.
- Operator: Right.
- Claimant: It will be inside the garage.
- Operator: Okay, perfect. So you're all good to go. I'll email your documents to you in the next little bit. Is there anything else I can help you with today?

Co-operators then issued a new Certificate of Automobile Insurance. This was issued effective September 15, 2021 at 12:01 a.m. and added an OPCF-16 - suspension of coverage endorsement. A review of the certificate confirms that the OPCF-16 was added, that collision and transportation replacement (OPCF-20) coverage were deleted and that all road coverages, liability, accident benefits, uninsured automobile and direct compensation - property damage were all under suspension.

Attached to the certificate is an OPCF-16. It is not disputed that this document is not identical to the standard form issued by the Superintendent. What is missing is the top half of the Superintendent's document (the box where one would put the policy number and the effective date of the change which in fact appears on the Certificate of Insurance) as well as the words "Please sign and return this form. Keep a copy for your records." Sections 1 through 3 are identical.

On the Co-operators document that is attached to Melba's policy is the following:

"Signature of insured - **Signature on file**"

The document itself indicates "Date Prepared: September 14, 2021."

There was no evidence led as to the meaning of the words "Signature on File".

Turning to the accident itself. It occurred on November 9, 2021. The Application for Accident Benefits indicates it occurred at 12:42 p.m. The police report also indicates it occurred at 12:42 p.m.

Melba was operating the 2020 Toyota when she struck the claimant who was on a bike. The

accident occurred in Niagara Falls.

The Co-operators underwriting file shows that after the accident occurred at 12:42 p.m. on November 9, 2021, Melba contacted Co-operators. The note indicates the call came in at 3:17 p.m. The note reads: "Client called to remove OPCF-16 as they are now back in Ontario effective for today."

A further note at 3:22 p.m. indicates: "OPCF-16 removed. Client has returned to Ontario and has requested OPCF be removed from 2020 Toyota Corolla. Change applied and renewal updated for client."

Co-operators then issued a further updated auto insurance policy to Melba. This was prepared November 9, 2021 and the summary of the policy changes indicate "Deleted - 16 - suspension of coverage". The effective date is November 9, 2021 at 3:17 p.m. and expiry is the renewal date of December 28, 2021. This reinstatement of coverage took place approximately two-and-a-half hours after the motor vehicle accident.

The claimant applied by way of an OCF-1 for statutory accident benefits to the Motor Vehicle Accident Claims Fund. The OCF-1 was dated November 17, 2021. The claimant indicated that she had no access to a policy of her own. She did not have access to a spouse's policy, a company car, nor did she have access to a policy under which she was a dependant.

Once the Fund determined the identity of the striking vehicle and determined that there was potential coverage under policies issued by Co-operators and Chubb, a Notice of Dispute Between Insurers was served. A Notice to Commence Arbitration was issued dated August 1, 2024.

RELEVANT LEGISLATION

Section 268 of the *Insurance Act* provides a cascading scale for the priority of payments for statutory accident benefits. For a non-occupant, s. 268(2) provides as follows:

1. The non-occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured.
2. If recovery is unavailable under subparagraph (1), the non-occupant has recourse against the insurer of the automobile that struck the non-occupant.

Also relevant is the definition of an insured person under s. 3 of the Statutory Accident Benefits Schedule which is set out below:

"'insured person' means, in respect of a particular motor vehicle liability policy,

- (a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse, ...

- (b) a person who is involved in an accident involving the insured automobile, if the accident occurs in Ontario"

Also relevant is s. 3(1) which defines "insured automobile":

"'insured automobile' means, in respect of a particular motor vehicle liability policy, an automobile covered by the policy"

SUBMISSIONS OF THE PARTIES

Submissions of Co-operators

Co-operators' position is that at the time of the motor vehicle accident of November 9, 2021 Melba's policy with Co-operators had been properly suspended under an OPCF-16 endorsement. The endorsement cancelled all road coverages, including accident benefits. The policy only covered fire and theft - not the use or operation of the automobile. Co-operators acknowledges that accident benefit coverage remained if Melba were involved in an accident that did not involve the insured vehicle. Co-operators acknowledges that case law supports that there is a residual claim for statutory accident benefits in those circumstances.

However, in this case the described vehicle under the Co-operators' policy was being operated by Melba and accordingly the suspension applied and no accident benefit coverage was available whether it be Melba making an application or a pedestrian that she had struck.

Co-operators points to the wording of the OPCF-16 itself. The document is described as a "suspension of coverage". Under paragraph 2.2 there is the following agreement:

"You agree that the following coverages will be cancelled for the use or operation of the described automobile ...

- Section 3: Liability coverage
- Section 4: Accident benefit coverage"

Under s. 3 "period of suspension" is the following:

"This cancellation will be in effect from the effective date of this change until coverage is reinstated by OPCF-17 - reinstatement of coverage."

Co-operators submits that the suspension was in effect as of September 14, 2021 and that the suspension was not lifted until 3:17 p.m. on November 9, 2021 which was after the motor vehicle accident had occurred.

Co-operators submits that the effect of the OPCF-16 is that an automobile policy does not provide accident benefits when the described automobile is being used or operated during the suspension.

Co-operators submits that Melba was a "frequent flyer" with this type of suspension of coverage and reinstatement form of transaction. The Co-operators underwriting file and the transcript of the telephone call clearly indicate that Melba knew what she was doing, understood what coverages would be removed and why and that it was her intention to have those coverages removed. She also clearly understood that she had to call Co-operators in order to reinstate her road coverage. In fact, it is notable that she did this quite promptly after the motor vehicle accident which is clear evidence that she knew her road coverages were in fact suspended when the accident itself occurred.

Co-operators submits that a new Certificate of Insurance was issued on September 14, 2021 which clearly confirmed that the OPCF-16 was added to the policy and clearly outlined that automobile coverage, including accident benefits, were under suspension and only comprehensive coverage remained in force. This is consistent with a reduction of premium of \$331 from the previous premium.

Co-operators submits that the policy records and certificates create no ambiguity. It is clear that from September 15, 2021 until 3:17 p.m. on November 9, 2021 the Co-operators' policy did not insure the use or operation of Melba's Toyota. With respect to the Co-operators' form of OPCF-16 as compared to the approved form of the Superintendent, Co-operators submits there is little or no difference. The key wording under ss. 1 to 3 remains. The wording is consistent with the agreement of the insured and the insurer as evidenced over the years of their interactions. Co-operators also submits that there is no statutory requirement that the OPCF-16 be signed in order to effect the suspension of coverage.

Co-operators submits that arguably the claimant "signed" the OPCF-16 based on the note at the bottom: "Signature on file." While Co-operators acknowledges there was no evidence as to what that specifically means, they argue that it is consistent with an electronic signature being on file and being used as was the developed practice during COVID. Alternatively, Co-operators argues that even if I find that does not constitute a signature, the lack of a signature does not void a contractual amendment that has been requested by the insured. At most, it goes to proof. Co-operators submits that the governing question is, "Was there an agreement and a meeting of the minds?" Co-operators submits that there was.

Co-operators also submits that there is clear evidence that the Certificate of Insurance, together with the OPCF-16 created September 14, 2021, was sent to the insured. Firstly, the conversation between the claimant and the representative of Co-operators on September 14, 2021 indicates: "Okay, I have gone ahead and issued that. I will email you." As well, Co-operators relies on the underwriting log notes that list the communications that have been sent to the insured. These log notes show that on September 14, 2021 a letter and PDF were mailed to the claimant. There is a note that this is a policy/change for auto. On the same day there is an indication that an email was also sent with the document indicating an auto policy change. This suggests that Co-operators both sent the letter via mail and as well online via email.

Similarly, on November 9, 2021 when the suspension was lifted the Co-operators underwriting log notes indicate that there was a PDF sent out to the claimant with a document indicating an

auto/policy change.

Co-operators notes that at one point during these proceedings, Chubb did ask for an EUO to be conducted of the claimant and a representative of Co-operators' underwriting. However, they chose not to proceed with that.

Co-operators submits that therefore its policy was not a motor vehicle liability policy on the date of loss as it did not provide motor vehicle liability insurance, but fire and theft coverage only. There was no accident benefit coverage. Therefore, the claimant could not be considered to be an "insured" person under the policy with the right to access statutory accident benefits. Therefore, priority rests with Chubb.

Submissions of Chubb

Chubb submits that the Co-operators policy remained a motor vehicle liability policy despite any suspension. Chubb submits that the only way an insurer can avoid SABS coverage is by cancelling the motor vehicle liability policy in its entirety and then issuing a brand new policy that is not a motor vehicle liability policy. Chubb relies on the decision in *Dominion of Canada General Insurance Company v. Optimum Insurance Company*, 2016 ONSC 985 as support for their position.

Chubb submits that while Co-operators issued a Certificate of Insurance amended with an OPCF-16 that purported to suspend coverage, that that did not result in their policy no longer being a motor vehicle liability policy which in accordance with s. 268(1) of the *Insurance Act* is deemed to provide for statutory accident benefits.

Chubb also takes the position that the OPCF-16 used by Co-operators was not in the approved form. It was in their own form albeit it had much of the wording of the standard form approved by the Superintendent. In that regard, Chubb relies upon a series of cases where insurers who did not use an OPCF-16, or used a different type of form, were held not to have properly suspended the coverage. The cases relied upon by Chubb include

- *Certas v. CGU/Aviva*, 2005 CarswellOnt 1159
- *Jevco Insurance Company v. State Farm Insurance Company*, 2013 CarswellOnt 1935
- *Allstate Insurance Company of Canada v. State Farm Mutual Automobile Insurance*, 2018 CarswellOnt 3222.

In each of those cases no OPCF-16 standard form was used. In the two cases involving State Farm it had issued a document called "Acknowledgement of Vehicle Withdrawal from Use" instead of the OPCF-16. In these cases, the insurers argued that the OPCF-16 was not required as it was clear the intention of the parties was to reduce coverage. The arbitrator in each case concluded that s. 227 of the *Insurance Act* requires that all policy endorsements be completed in a form approved by the Superintendent of Insurance. Absent any evidence that the specific form used by State Farm had been approved by the Superintendent, the document used therefore did not

result in a suspension of coverage.

Chubb submits that the Co-operators document falls within this category and line of cases. Chubb also submits that there is no evidence to substantiate that the OPCF-16 was delivered to the insured at any time before the accident as required under s. 232(3) of the *Insurance Act*. Chubb submits that it is necessary that evidence be established to show that the insured understood and appreciated the effect of the form and its reduction of coverage.

Chubb submits there is no evidence that Melba received the certificate prepared on September 19, 2021 or the OPCF-16 attached. There was no evidence that she had received the past policy amendments with a suspension in coverage.

On top of that Chubb submits that there was no evidence that Melba made an informed decision on September 14, 2021 or on any of the other previous occasions that Co-operators is relying upon. In this regard, Chubb specifically points to the fact that there is no evidence that the claimant signed the OPCF-16. There is no evidence as to what "signature on file" means, nor the circumstances surrounding any purported signature on file. Chubb asks what, if anything, was explained to Melba before she allegedly signed this document.

With respect to the signature, Chubb submits that the OPCF-16 approved by the Superintendent clearly requires the signature of an insured person. The purpose of that is to ensure that there is evidence that the insured understands the effect of the document they have been given. This is consistent with the consumer interest nature of these documents as set out in *Smith v. Co-operators*, 2002 SCC 30.

Chubb also submits that the Certificate of Insurance, assuming it was provided to the claimant in September 2021 is confusing and may make her believe that she was entitled to some accident benefits. While accident benefits under the insurance coverage is clearly noted as being under suspension, at page six of the document under "explanation of your insurance", the document outlines an explanation of the insurance "outlined in this certificate". This explanation includes descriptions about liability coverage, accident benefits, uninsured automobile and direct compensation - property damage. Chubb submits that an average person reading this would assume that they had coverage for statutory accident benefits.

Chubb also submits that Co-operators breached s. 236 of the Act. Section 236(1)(a) provides that if an insurer proposes to renew a contract on varied terms, that the insurer shall give the named insured not less than 30 days' notice in writing of the insurer's intention or proposal.

Chubb submits that Co-operators did not comply with this requirement as the policy was changed without a 30-day notice of the insurer's intention.

Lastly, Chubb's position is that the claimant in this case was an innocent third party and it is inconsistent with legislative policy that she would be prohibited from making a claim for statutory accident benefits from Co-operators, the striking vehicle, and be forced to make a claim against the payer of last resort, the Motor Vehicle Accident Claims Fund.

Chubb submits that the OPCF-16 only cancels (if it does cancel) accident benefits coverage for the Co-operators' insured. Chubb points to the Co-operators' policy which defines "you" as the person or organization shown on the Certificate of Automobile Insurance as the named insured. Therefore, when you review the words at s. 2.2 of the OPCF-16 which states "You agree that the following coverages will be cancelled," that this results in that cancellation only applying to Melba and not applying to pedestrians that she may strike with the vehicle.

Chubb does acknowledge that if the Co-operators policy was suspended and it does not provide accident benefits to the claimant, then the Chubb policy does.

Co-Operators' Reply

With respect to Chubb's argument that Co-operators failed to comply with s. 236(1) of the *Insurance Act* (requirement to give the insured 90 days if the insurer renews the contract on varied terms), Co-operators submits that this does not apply in circumstances where the request for a term of the contract to be varied is made by the insured.

Co-operators submits that this is not a case similar to cases dealing with an insurer cancelling a policy and where there are strict requirements in terms of how that policy is cancelled. Rather, the circumstances of this case are that the claimant herself initiated the policy suspension, and in accordance with her wishes the suspension went into effect immediately as she was leaving on holiday the next day.

With respect to the argument that the certificate and OPCF-16 are unclear with respect to the suspension of accident benefits due to the explanation of insurance, Co-operators submits that that document simply states that it is going to provide a brief explanation of the insurance "outlined in the certificate". Nowhere in the document does it indicate that the insurance is or is not provided for. Rather, you have to go to the certificate to see what insurance is provided for and the certificate specifically notes that accident benefits are suspended. Further, that wording would be consistent with the fact that there remains some residual access to accident benefits in limited circumstances to the named insured if she is injured when she is not operating the described automobile. That does not apply to the circumstances of this case.

With respect to the argument that the innocent third party should not be bound by Melba's suspension of coverage, Co-operators submits that that is simply not a viable argument. That would suggest that if somebody had their policy cancelled for non-payment, that it would be unfair that as the cancellation would affect innocent third parties. Further, this is not a case where the payer of last resort is going to be the Motor Vehicle Accident Claims Fund. The innocent third party has access to the Chubb policy.

With respect to the issue of the signature, Co-operators relies on the decision of Arbitrator Samworth in *Certas v. Allstate* (November 2, 2020). In that case the arbitrator held that if there is imperfect compliance with the signature formalities, that will not invalidate the OPCF-16 where there is evidence that the insured knew what she was requesting and understood the coverage was suspended. Co-operators submits that that is the case here.

Co-operators also relies on the case of *Aviva v. Intact*, 2018 ONSC 6527 where the court held that the failure to abide by the mandatory terms of a statute does not vitiate a contract between the parties where there is a meeting of the minds.

With respect to Chubb's submissions that the policy could only have been changed from a motor vehicle liability policy to a non-motor vehicle liability policy if it was completely cancelled and then reissued as a non-motor vehicle accident policy, Co-operators submits that that results in there being no purpose to the OPCF-16. Further, Co-operators submits:

"Chubb's position would require the arbitrator to disregard the insured's request, the recorded call, the premium reduction, the underwriting history and the plain wording of the endorsement. The record does not permit that result. The suspension was valid. Coverage was not in force. Priority rests with Chubb."

DECISION AND ANALYSIS

Having carefully reviewed the documentation, submissions, case law and as well the oral submissions of the parties, for the reasons set out below I conclude that the OPCF-16 was valid on the date of loss of November 9, 2021 and operated to exclude a claim for statutory accident benefits by the claimant. As accident benefits were properly suspended, there was no coverage and accordingly the Co-operators policy is not obliged to respond. I therefore find that Chubb is the priority insurer pursuant to s. 268 of the *Insurance Act*.

There is no doubt that Melba had a history going back to 2011 of suspending coverage on her vehicle with Co-operators while she was away on holiday and the vehicle was in the garage. A review of the Co-operators underwriting file and log notes in my view establishes with absolute certainty that Melba understood the nature of these transactions and what she was asking for and what she received.

I can find no evidence to support Chubb's contention that Melba might have been confused or lacked any understanding as to the nature of these transactions and specifically the result that there was a suspension of statutory accident benefits when the described automobile on the Co-operators policy was being operated.

On September 14, 2021 Melba contacted Co-operators and, as she had in the past, requested that she stop the coverage on her auto policy (not cancel it) while she was away on holiday. The claimant specifically states when given the option of cancelling the policy completely, "No, no, no, I don't want to cancel. I just want to stop and when I do that I stop it." Melba clearly understood the difference between cancelling a policy and suspending a policy. She wanted her policy suspended while she was on vacation and she wanted it to start the next morning.

The operator who was on the phone with her confirmed this request with her, advised her what the premium reduction would be, the time that the suspension would have to be in place and confirmed that in order to reinstate, Melba would have to call. It was also made clear that Melba could not operate the vehicle during that time.

This was similar to information given to Melba on previous occasions when she had requested her suspension of coverage, as evidenced by the Co-operators underwriting log notes.

Melba specifically wanted her policy to continue to provide coverage for fire and theft while the car was being stored in the garage but not for other coverage that would only have bearing if the car was being driven. There is nothing that lacks clarity or is ambiguous about this conversation, the underwriting notes and the request being made by the insured.

This is confirmed by the issuance of a Certificate of Insurance together with an OPCF-16 prepared on September 14, 2021 and with an effective date of September 15, 2021. Further, I find that based on the evidence, and in particular the underwriting log notes that showed the communications sent to the insured, that the certificate together with the OPCF-16 was sent out by mail and/or email on September 14, 2021.

I agree with Co-operators that the fact that the insured knew she had to call in and reactivate her coverage after this motor vehicle accident occurred is significant and clearly reflects the degree of understanding of Melba with respect to the nature of the OPCF-16 suspension.

Therefore, I find that there is evidence to establish that Melba received the certificate and the OPCF-16. Further, I am satisfied on the evidence that she understood what she was asking for and the nature of the suspension brought about by the OPCF-16.

With respect to the OPCF-16 itself I find that the document, while not identical in its format to the OPCF-16 standard form, when combined with the Certificate of Insurance it provides the identical information. The only wording that would be missing from these combined documents that is found on the standard form is, "Please sign and return this form. Keep a copy for your records." As I found in the *Certas v. Allstate* decision (November 2, 2020), while this form does not specifically ask the insured to sign and return the form and keep a copy, there is still at the bottom of the page a signature line and a date which suggests to the claimant that a signature may be requested.

However, I also agree with Co-operators that there is nothing in the *Insurance Act*, the Statutory Accident Benefits Schedule, in the insurance contract or its regulations or in the OPCF-16 that states that it is mandatory for there to be a signature on this document for it to be operative. Practically speaking, in the context of modern-day insurance transactions it makes sense not to require an actual signature and date for the form to be effective. As I noted in *Certas v. Allstate (supra)*, while it is good business practice to have a signed form in cases such as this, it does not necessarily mean that the insured did not agree with the endorsement, had not requested the coverage or was not aware of the coverage simply because there is no signature.

In addition, in this case I find there is in fact a signature on the OPCF-16. The document itself indicates "signature on file". This transaction took place after COVID when electronic signatures became the norm to conduct business transactions in order to ensure people complied with regulations that required them to stay at home. Considering the conversation between Melba and the operator on September 14, 2021 it is clear that Melba was requesting this endorsement

and therefore it would be appropriate to note that her signature was on file in accepting the endorsement. There was also the lengthy history of the previous more or less identical transactions.

I also agree with Co-operators in their submissions that there is not only no statutory requirement that the OPCF-16 be signed in order to effectively suspend coverage, but that the absence of a signature would not void any contractual amendment that was requested by the insured as in this case. At most, this goes to a question of proof.

In that regard I note the decision in *Gore Mutual Insurance Company v. 1443249 Ontario Ltd.*, 2004 CanLII 27736, a decision of Justice Karakatsanis. While this case did not involve an OPCF-16, it involved an OPCF-28A excluded driver endorsement. Justice Karakatsanis concluded that the insurer bears the onus of satisfying the court that the insured agreed to amend the insurance policy to exclude the coverage. In the case before me I am satisfied that Co-operators has satisfied its onus that Melba not only agreed to the OPCF-16 suspension of coverage, but requested it.

With respect to the argument by Chubb that the OPCF-16 is not valid because it is not an identical nor an approved form under s. 227(1) of the *Insurance Act*, I conclude that that is not a requirement in order for the endorsement to be effective.

Firstly, as noted earlier the Co-operators form of endorsement is close to identical to the standard form. A box is missing at the top which identifies the policy number and certificate number. However, that information is reflected on the certificate that accompanies the policy of insurance. The key aspects of the endorsement are identical. There was only one sentence missing.

I agree with Co-operators' submissions that technical non-compliance with statutory forms does not automatically void what is otherwise a binding insurance agreement. Section 126(2) of the *Insurance Act* protects contracts from being rendered void by reason of non-compliance. Further, my decision is supported by the Court of Appeal in the decision of *Royal & Sun Alliance Insurance Company of Canada v. Intact Insurance Company*, 2017 ONCA 381.

In that case the insured had a suspended licence but wanted to continue her automobile insurance with Intact on her car so that her husband could drive it. Intact set up an excluded driver endorsement that the insured signed. The evidence was that she understood that this would continue to apply even if she got her licence reinstated. She did get her licence reinstated and did not seek to remove the endorsement. She then drove her car and had an accident. The issue before the court was whether the excluded driver endorsement was in full force and effect and whether Intact had any duty to defend.

The court at first instance found that the excluded driver endorsement was in full force and effect at the time of the accident. Royal appealed and argued that the excluded driver endorsement was void under s. 227(1) of the *Insurance Act* as it was not in a form that was pre-approved by the Superintendent of Financial Services.

The Court of Appeal held that the matter should be dismissed. The court stated, "I conclude that

the use of an unapproved form, as is alleged here, does not necessarily invalidate an agreement between the parties about exclusion from insurance coverage."

The court held that it was not the role of the courts, while applying the law of contract, to read into s. 227 that non-compliance with a form would void a contract as a matter of law. The court stated:

"It is necessary to interpret section 227 in the context of the Act, its purpose and the regulatory scheme as a whole to determine the legislative intent. Doing so leads me to conclude the legislature intended that a lack of compliance with section 227(1) is a matter for the Superintendent. It is not the role of the courts, while applying the law of contract, to read into section 227 that a non-compliant form is necessarily void as a matter of contract law."

In applying *RSA v. Intact* to the circumstances of this case, if it were to be determined that Co-operators had not used an approved OPCF-16 form compliant with the Superintendent's form, that that would not void the clear contractual arrangement entered into between Melba and Co-operators to suspend her coverage on September 14, 2021.

Turning now to the argument of Chubb that the only way a motor vehicle liability policy can stop being a motor vehicle liability policy is to cancel the policy in its entirety and reissue a new one. With respect, I do not find that makes interpretive sense of the *Insurance Act* and the purpose of the OPCF-16. Chubb relies on the decision of *Dominion of Canada General Insurance Company v. Optimum Insurance Company*, 2016 ONSC 985 in support of its position. A more detailed look at that case is therefore necessary.

This was a decision from Justice Perell in 2016.

Arbitrator Bialkowski had heard two cases where the insured had asked to have coverage reduced to comprehensive only, but neither insurer had ever issued an OPCF-16. Both the insureds' policies renewed prior to the motor vehicle accident. They renewed with comp coverage only and without SABS. Again, it is notable that an OPCF-16 was not used.

Arbitrator Bialkowski ruled that the failure to use the OPCF-16 resulted in the policies continuing to be motor vehicle liability policies containing SABS coverage and therefore Dominion stood in priority.

This case is distinguishable based on the fact that no OPCF-16 was used but also distinguishable because of the argument that was available to the parties that when the renewal of the policy took place it renewed to a non-motor vehicle liability policy with no SABS coverage.

Optimum argued that while the renewal constitutes a new policy of insurance, as it was the successor of what was once a motor vehicle liability insurance policy, that that policy therefore continued in full force and effect to provide SABS coverage. Optimum alleged that Dominion's failure to use the OPCF-16 results in the renewed policy continuing to be a motor vehicle liability

policy.

The following are relevant comments from Justice Perell:

"In the immediate cases, the parties agree that in the first instance it would be possible for an owner of a motor vehicle to purchase just comprehensive insurance and if he or she did so then the policy would provide no SABS coverage for the insured and no SABS liability for the insurer. But that scenario did not occur in either of the two cases before the court. In both cases, the insured had at one time purchased a motor vehicle liability policy but renewed the policy with only comprehensive coverage. In both cases the reduction of the extent of coverage was accomplished without the use of a form entitled OPCF 16 - suspension of coverage."

"There are sound policy reasons for requiring the use of the OPCF-16 midterm even though its use means that the insured cannot cancel all of his or her liability coverage. The fact that the insurance policy is subsequently renewed as just a comprehensive policy begs the question of what was renewed and the question of whether the insured understood what he or she was purchasing in renewing a policy that at one time included liability coverage."

I do not read this case as holding that when an OPCF-16 is properly issued and understood by the claimant that it is not effective to eliminate coverage for accident benefits except in limited circumstances when the described automobile is not being used or operated. If it were to be the case that the only way to suspend accident benefits and other liability coverage while a vehicle is in storage is to cancel the policy entirely and reissue a different form of the policy, then there would be absolutely no use for the OPCF-16. The OPCF-16 eliminates coverage for liability, direct compensation, uninsured coverage and accident benefits in the circumstances when the described vehicle is being operated.

Coverage remains in place for a more limited premium where the named insured under the policy, her dependants or spouses are involved in an accident not involving the described automobile. Here, with a valid OPCF-16 and the accident involving the described vehicle, I find that the OPCF-16 is effective to eliminate the claim for accident benefits of the claimant. I do not find the "innocent third party" argument to be applicable in these circumstances. We are dealing with no-fault insurance. Whether the claimant in this case was innocent or not is irrelevant to what coverage was available on the Co-operators policy for the described vehicle on the date of loss. In my view that did not include statutory accident benefits and the Co-operators policy therefore had no coverage for statutory accident benefits for the claimant and Co-operators would not be a priority insurer in those circumstances.

AWARD

I find that the OPCF-16 was in effect on the date of loss and that it absolves the respondent the Co-operators of its obligation to pay statutory accident benefits to the claimant.

Therefore Chubb is the priority insurer under s. 216 of the *Insurance Act* and required to pay the claimant's accident benefits.

COSTS

As Co-operators was entirely successful in this matter I find that the arbitration fees and any related disbursements are payable by Chubb. Similarly Co-operators legal fees and any related disbursements are payable by Chubb on a partial indemnity basis. If the parties cannot agree on the quantum of costs they can schedule a further pre-hearing to set a date for a costs hearing.

DATED THIS 7th day of April, 2026 at Toronto.



Arbitrator Philippa G. Samworth
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